Filed 2/5/03 In re Gilbert D. CA4/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re GILBERT D., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. GILBERT D., Defendant and Appellant.	E031534 (Super.Ct.No. J163139) **OPINION**

APPEAL from the Superior Court of San Bernardino County. Douglas N. Gericke, Judge. Affirmed.

Daniel H. Clifford, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Gary W. Schons, Senior Assistant Attorney General, and Rhonda L. Cartwright-Ladendorf, Supervising Deputy Attorney General, for Plaintiff and Respondent.

The juvenile court found true that minor violated the terms of his probation by failing to be at the designated pickup time and leaving the school and care of the group home for five days as alleged in a subsequent Welfare and Institutions Code section 602[1] petition. Following a dispositional hearing, minor was committed to the California Youth Authority (CYA) for a maximum term of six years four months. Minor's sole contention on appeal is that the juvenile court abused its discretion in committing him to CYA. We find no abuse and will affirm the judgment.

I

FACTUAL AND PROCEDURAL BACKGROUND

Minor was initially declared a ward of the court in July 1999 after he admitted to committing one count of residential burglary (Pen. Code, § 459); the second count of residential burglary was dismissed. He was thereafter ordered into placement.

On September 14, 1999, minor was placed in the Ettie Lee Youth Home (Ettie Lee) in San Vincento. On June 27, 2000, minor was removed from Ettie Lee for physically assaulting another ward at the placement center.

On June 30, 2000, the probation department filed a notice to revoke minor's probation on the grounds that minor failed to obey the rules and regulations and destroyed property at Ettie Lee. Minor admitted that he violated the terms of his probation as alleged in the notice. On July 18, 2000, following a dispositional hearing, minor was detained in juvenile hall pending placement at another facility.

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[1] All future statutory references are to the Welfare and Institutions Code unless otherwise stated.

On September 7, 2000, minor was placed at Ettie Lee in Fontana. Minor successfully completed the program at that placement center on April 13, 2001. He was then placed on probation and released to the custody of his mother.

On August 16, 2001, minor ran away from his mother's home. On August 27, 2001, the juvenile court issued a bench warrant for minor's arrest. The San Bernardino County District Attorney's office filed a section 602 petition alleging that minor violated the terms of his probation by leaving his home.

On September 10, 2001, minor came home and surrendered to the probation department. On September 12, 2001, minor admitted that he violated the terms of his probation. The court then ordered minor into custody pending further order of the court.

Eventually, minor was placed at Aiming High. Within one month, minor left that placement without permission. The San Bernardino County District Attorney's office filed another subsequent petition alleging that minor violated the terms of his probation by leaving his court-ordered placement without permission. The court issued a warrant for minor's arrest.

Subsequently, the San Bernardino County District Attorney's office filed a third subsequent petition alleging that minor resisted a peace officer (Pen. Code, § 148, subd. (a)(1)). On January 17, 2002, minor admitted the allegation.

On February 1, 2002, following a dispositional hearing, the court ordered minor to remain in custody until a suitable placement facility could be found. On February 28, 2002, minor was placed at the Optimist Boy's Home.

On March 20, 2002, the San Bernardino County District Attorney's office filed a fourth subsequent petition alleging that minor violated the terms of his probation by failing to be at the designated pickup time and leaving the school and care of the group home for five days. On April 10, 2002, the court found the allegation to be true.

On April 24, 2002, following a dispositional hearing, minor was committed to CYA. This appeal followed.

II

DISCUSSION

Minor contends the juvenile court abused its discretion in committing him to CYA without considering the benefits of CYA on minor. Specifically, he maintains CYA is inappropriate here due to his drug and intellectual deficit problems. We disagree. The record clearly demonstrates the court considered the benefits of CYA on minor and the alternatives, but rejected the alternatives as inappropriate before arriving at the decision to commit minor to CYA.

We review a placement decision only for abuse of discretion. (*In re Asean D.* (1993) 14 Cal.App.4th 467, 473.) The court will indulge all reasonable inferences to support the decision of the juvenile court. (*Ibid*.) An appellate court will not lightly substitute its decision for that of the juvenile court and the decision of the court will not be disturbed unless unsupported by substantial evidence. (*In re Eugene R.* (1980) 107 Cal.App.3d 605, 617.) The juvenile court may consider a commitment to CYA without previous resort to less restrictive placements. (*In re Asean D.*, *supra*, at p. 473.) Lastly, "the 1984 amendments to the juvenile court law reflected an increased emphasis on

punishment as a tool of rehabilitation, and a concern for the safety of the public." (*Ibid*.) Since retribution must not be the sole reason for punishment, there must be evidence demonstrating probable benefit to the minor and the inappropriateness or ineffectiveness of the less restrictive alternatives. (*In re Michael D.* (1987) 188 Cal.App.3d 1392, 1396; *In re Teofilio A.* (1989) 210 Cal.App.3d 571, 576.) Evidence relevant to the disposition includes, but is not limited to, the age of the minor, the circumstances and gravity of the offenses committed, and the minor's previous delinquent history. (§ 725.5.)

After a review of the entire record, we conclude there is substantial evidence here to support the commitment to CYA. The juvenile court properly found that commitment to CYA would be of probable benefit to minor because of the programs offered there. Minor, who is 16 years old, is in serious need of educational services or vocational training. When enrolled in school, minor's behavior was intolerable: he was defiant of school authority and the attendance policy and was suspended several times. In fact, the record reveals he made little gain in the area of academic achievement. As minor acknowledges, he is also in dire need of alcohol and substance abuse counseling. He has been using marijuana and methamphetamine since the age of 11. Indeed, minor reported that he is very concerned with his drug problem and wants to receive treatment. In addition, minor is in need of gang awareness. Although he denied gang membership or association, he admitted he used to associate with a gang and has been hanging out with his cousin, who belongs in a gang. Based on his past and present offenses, his emotional and psychological problems, and his past suicide attempts, minor is also in dire need of anger management counseling, victim awareness counseling, and individual therapy.

Minor's best interests and potential for the future can be adequately addressed by a commitment to CYA because of the programs offered there. As noted in the probation report, at CYA, minor would receive special academic assistance, weekly individual and group counseling, and complete a drug rehabilitation program. The court articulated these concerns. The record sufficiently supports the court's determination that minor would benefit by the reformatory, education, discipline or other treatment provided by CYA.

Minor also argues the juvenile court failed to fully explore the benefits of less restrictive alternatives. We confirm that substantial evidence supports the juvenile court's finding that a less restrictive alternative would be ineffective and inappropriate. Contrary to minor's assertions, the record here demonstrates that the court considered less restrictive alternatives but rejected them as inappropriate. Indeed, minor's counsel at the dispositional hearing "submit[ted] on a youth authority commitment . . ." because "there's just nothing else left at this point." Minor also reported to the probation officer that "he does not believe placement is helping him and he wants to be in a locked facility."

Minor has a history of criminal offenses and a lengthy history of failure to cooperate with the court, the probation department, placement staff, and his mother. Minor has been a ward of the court for about three years, and in an effort to rehabilitate minor, the court has taken a step approach. Minor was given an opportunity to mend his delinquent behavior on informal and formal probation, numerous incarcerations in juvenile hall, and three out-of-home placements. However, he failed to reform and

curtail his delinquent behavior on the local level. Minor's age, the circumstances and gravity of the current offenses, minor's previous delinquent history, the benefits of CYA on minor, and the safety of the community all establish that minor requires commitment in a more structured and secure environment than placement can offer. The court properly found a less restrictive alternative to be unfeasible.

Accordingly, we conclude the juvenile court did not abuse its discretion by committing minor to CYA.

III

DISPOSITION

The judgment is affirmed.

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RICHLI
J.

We concur:

HOLLENHORST
Acting P.J.

GAUT
J.